(2012) 11 KL CK 0092

In the High Court Of Kerala

Case No : O.P. (C) No. 1802 of 2012

Ahammed APPELLANT

Vs

Kunhipathumma RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 7

Citation : (2012) 4 KLT 577

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : T. Krishnan Unni and P.K. Mohanan Palakkad, for the Appellant; A.R. Dileep as Amicus Curiae, for the Respondent

Judgement

V. Chitambaresh

1. Is stamp duty leviable according to the Stamp Act in force at the time of the passing of the final decree or at the time of engrossing the final decree on non-judicial stamp papers in a suit for partition ? This assumes importance since the Kerala Stamp Act, 1959 (''the Act'' for short) has been amended by the Kerala Finance Act, 2011 whereby the stamp duty leviable for partition decree is drastically reduced. The preliminary decree in the suit for partition in O.S.No. 41/1970 on the file of the court of the Subordinate Judge of Tirur was passed on 9.4.1974 followed by a final decree on 5.1.2009. The same was the subject matter of appeal in R.F.A. No. 413/2009 on the file of this Court wherein the case was remanded and a final decree for partition passed anew by the trial court on 8.7.2011. The petitioner herein who was the plaintiff in the suit furnished non-judicial stamp papers worth Rs. 1,000/- and filed I.A.No. 2854/2011 on 25.10.2011 for engrossing the final decree. The petitioner contended that the sharers are entitled to the benefit of the amended Act which has come into force with effect from 19.7.2011 whereunder the maximum stamp duty leviable is only Rs. 1,000/-. The petitioner asserted that stamp duty could be levied only at the rate prevailing as on the actual date of engrossing the final decree for partition

on non-judicial stamp papers. The court below has by the order impugned dismissed I.A.No. 2854/2011 holding that the sharers are liable to pay stamp duty at the rate prevailing when the final decree for partition was originally passed on 5.1.2009.

2. I heard Mr. T. Krishnanunni, Senior Advocate on behalf of the petitioner and the Government Pleader who was put on notice. Valuable assistance was also rendered by Mr. A.R. Dileep, Advocate who had been appointed as the amicus curiae by his sober and mature arguments.

3. I shall at the outset refer to some of the provisions of the Civil Rules of Practice (Kerala), 1971 (''the Rules'' for short) in regard to the engrossing of the final decree for partition on non-judicial stamp papers. R. 187 of the Rules is as follows:-

187. Final decree in partition suits:- Final decrees in partition suits shall be prepared and stamp duty levied in accordance with the following directions:

(1) The value of the shares shall be the value as assessed by the Commissioner and accepted by the Court.

(2) The stamp duty leviable shall be according to the Stamp Act in force at the time of the passing of the final decree.

(3) The Court shall insist on the Commissioner filing a schedule showing the valuation of the shares for the purpose of stamp duty.

Rule 236 of the Rules is as follows:-

236. Furnishing of stamp paper for final decree:- The Court shall, in its final judgment in a partition suit, direct the parties to deposit in court the amount required for the non-judicial stamp paper for engrossing the decree in proportion to the value of their shares and any party failing to deposit the amount as directed within the time allowed shall be deemed to be in default and shall be liable for the costs of the adjournment. The Court may allow any party to deposit the entire amount or the share of any other party and direct the same to be realised from the party or parties liable for the same.

A combined reading of R. 187 and R.236 of the Rules reveals that the stamp duty leviable shall be according to the Act in force at the time of passing of the final decree and that the court in its final judgment should specify the amount. The court should also direct the parties to deposit in court the amount required for the non-judicial stamp papers for engrossing the final decree in proportion to the valuation of their shares.

4. The date of the final decree cannot be different from the date of the final judgment in a suit for partition and a reference to O. XX R. 7 of the Code of Civil Procedure, 1908 (''the CPC'' for short) is apposite. The same reads as follows:-

7. Date of decree:- The decree shall bear date the day on which the judgment

was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

[Provided that the decrees of the High Court may be signed by the officer empowered in that behalf.].

It is therefore crystal clear that the sharers are obliged to pay stamp duty at the rate prevailing as on the date of final judgment (which should be the date of final decree also) no matter the final decree was engrossed on non-judicial stamp papers later.

5. The stamp duty leviable as per Sl.No. 42 in the Schedule under the Act as on the date of the revised final decree (8.7.2011) was at the rate of 1% of the amount of Rs. 43,29,340/- being the value of the separated share in the instant case. Therefore the court below egregiously erred in holding that the sharers are liable to pay stamp duty at the rate of 5% of the value of the separated share as on the date of passing of the final decree (5.1.2009) originally. But then the sharers are not entitled to the benefit of the amendment to the Act brought in by the Kerala Finance Act, 2011 reducing the stamp duty to a maximum sum of Rs. 1,000/-. This is because the amendment has come into force only with effect from 9.7.2011 after the date of passing of the final decree even though before the date of furnishing non-judicial stamp papers. I am unable to countenance the arguments of the petitioner that the provisions of the Act which is a fiscal statute should receive interpretation beneficial to the sharers in the scheme of these statutory provisions. The petitioner lamented that the sharers would be forced to pay a sum of Rs. 43,293/- instead of a mere Rs. 1,000/- as stamp duty for the sole fact that the Act was amended 11 days after the final decree. I shall quote from Distt. Registrar and Collector, Hyderabad and Another Vs. Canara Bank Etc., and the following excerpt is a complete answer to the problem posed:

The Stamp Act is a piece of fiscal legislation. Remedial statutes and statutes which have come to be enacted on demand of the permanent public policy generally receive a liberal interpretation. However, fiscal statutes cannot be classed as such, operating as they do to impose burdens upon the public and are, therefore, construed strictly. A few principles are well settled while interpreting a fiscal law. There is no scope for equity or judiciousness if the letter of law is clear and unambiguous. The benefit of any ambiguity or conflict in different provisions of statute shall go to the subject.

(emphasis supplied)

The impugned order is modified accordingly and the court below is directed to reconsider I.A.No. 2854/2011 filed for engrossing the final decree on the sharers furnishing the requisite non-judicial stamp papers in the light of the observations above.

The Original Petition is disposed of. No costs.